

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# SENATE BILL 1332

## AN ACT

AMENDING TITLE 8, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-238; AMENDING SECTION 13-610, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-611; AMENDING SECTION 13-3967, ARIZONA REVISED STATUTES; RELATING TO DEOXYRIBONUCLEIC ACID TESTING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 8, chapter 2, article 3, Arizona Revised Statutes, is  
3 amended by adding section 8-238, to read:

4 8-238. Advisory hearing: DNA

5 A. IF A JUVENILE IS ARRESTED FOR A VIOLATION OF ANY OF THE FOLLOWING  
6 OFFENSES AND IS SUMMONED TO APPEAR AT AN ADVISORY HEARING, THE JUDICIAL  
7 OFFICER SHALL ORDER THE JUVENILE TO REPORT WITHIN FIVE DAYS TO THE LAW  
8 ENFORCEMENT AGENCY THAT ARRESTED THE PERSON OR TO THE AGENCY'S DESIGNEE AND  
9 SUBMIT A SUFFICIENT SAMPLE OF BUCCAL CELLS OR OTHER BODILY SUBSTANCES FOR  
10 DEOXYRIBONUCLEIC ACID TESTING AND EXTRACTION:

11 1. AN OFFENSE LISTED IN TITLE 13, CHAPTER 11.

12 2. A VIOLATION OF SECTION 13-1402, 13-1403, 13-1404, 13-1405, 13-1406,  
13 13-1410, 13-1411 OR 13-1417.

14 3. A VIOLATION OF SECTION 13-1507 OR 13-1508.

15 4. A VIOLATION OF ANY SERIOUS OFFENSE PURSUANT TO SECTION 13-604  
16 INVOLVING THE DISCHARGE, USE OR THREATENING EXHIBITION OF A DEADLY WEAPON OR  
17 DANGEROUS INSTRUMENT OR THE INTENTIONAL OR KNOWING INFLECTION OF SERIOUS  
18 PHYSICAL INJURY.

19 B. IF A PERSON DOES NOT COMPLY WITH AN ORDER ISSUED PURSUANT TO  
20 SUBSECTION A OF THIS SECTION, THE COURT SHALL REVOKE THE PERSON'S RELEASE.

21 Sec. 2. Section 13-610, Arizona Revised Statutes, is amended to read:

22 13-610. DNA testing

23 A. Within thirty days after a person is sentenced to the state  
24 department of corrections or a person who is accepted under the interstate  
25 compact for the supervision of parolees and probationers arrives in this  
26 state, the state department of corrections shall secure a sufficient sample  
27 of blood or other bodily substances for deoxyribonucleic acid testing and  
28 extraction from the person if the person was convicted of an offense listed  
29 in this section and was sentenced to a term of imprisonment or was convicted  
30 of any offense that was committed in another jurisdiction that if committed  
31 in this state would be a violation of any offense listed in this section and  
32 the person is under the supervision of the state department of corrections.  
33 The state department of corrections shall transmit the sample to the  
34 department of public safety.

35 B. Within thirty days after a person is placed on probation and  
36 sentenced to a term of incarceration in a county jail detention facility or  
37 is detained in a county juvenile detention facility, the county detention  
38 facility shall secure a sufficient sample of blood or other bodily substances  
39 for deoxyribonucleic acid testing and extraction from the person if the  
40 person was convicted of or adjudicated delinquent for an offense listed in  
41 this section. The county detention facility shall transmit the sample to the  
42 department of public safety.

43 C. Within thirty days after a person is convicted and placed on  
44 probation without a term of incarceration or adjudicated delinquent and

1 placed on probation, the county probation department shall secure a  
2 sufficient sample of blood or other bodily substances for deoxyribonucleic  
3 acid testing and extraction from the person if the person was convicted of or  
4 adjudicated delinquent for an offense listed in this section. The county  
5 probation department shall transmit the sample to the department of public  
6 safety.

7 D. Within thirty days after the arrival of a person who is accepted  
8 under the interstate compact for the supervision of parolees and probationers  
9 and who is under the supervision of a county probation department, the county  
10 probation department shall secure a sufficient sample of blood or other  
11 bodily substances for deoxyribonucleic acid testing and extraction from the  
12 person if the person was convicted of an offense that was committed in  
13 another jurisdiction that if committed in this state would be a violation of  
14 any offense listed in this section and was sentenced to a term of probation.  
15 The county probation department shall transmit the sample to the department  
16 of public safety.

17 E. Within thirty days after a juvenile is committed to the department  
18 of juvenile corrections, the department of juvenile corrections shall secure  
19 a sufficient sample of blood or other bodily substances for deoxyribonucleic  
20 acid testing and extraction from the youth if the youth was adjudicated  
21 delinquent for an offense listed in this section and was committed to a  
22 secure care facility. The department of juvenile corrections shall transmit  
23 the sample to the department of public safety.

24 F. Within thirty days after the arrival in this state of a juvenile  
25 who is accepted by the department of juvenile corrections pursuant to the  
26 interstate compact on juveniles and who was adjudicated for an offense that  
27 was committed in another jurisdiction that if committed in this state would  
28 be a violation of any offense listed in this section, the compact  
29 administrator shall request that the sending state impose as a condition of  
30 supervision that the juvenile submit a sufficient sample of blood or other  
31 bodily substances for deoxyribonucleic acid testing. If the sending state  
32 does not impose that condition, the department of juvenile corrections shall  
33 request a sufficient sample of blood or other bodily substances for  
34 deoxyribonucleic acid testing within thirty days after the juvenile's arrival  
35 in this state. The department of juvenile corrections shall transmit the  
36 sample to the department of public safety.

37 G. Notwithstanding subsections A through F, ~~K, L AND O~~ of this  
38 section, the agency that is responsible for securing a sample pursuant to  
39 this section shall not secure the sample if the scientific criminal analysis  
40 section of the department of public safety has previously received and  
41 ~~maintains~~ IS MAINTAINING a sample sufficient for deoxyribonucleic acid  
42 testing.

1 H. The department of public safety shall do all of the following:

2 1. Conduct or oversee through mutual agreement an analysis of the  
3 samples that it receives pursuant to subsections K, L and O of this section.

4 2. Make and maintain a report of the results of each deoxyribonucleic  
5 acid analysis.

6 3. Maintain samples of blood and other bodily substances for at least  
7 thirty-five years.

8 I. Any sample and the result of any test that is obtained pursuant to  
9 this section may be used only as follows:

10 1. For law enforcement identification purposes.

11 2. In a proceeding in a criminal prosecution or juvenile adjudication.

12 3. In a proceeding under title 36, chapter 37.

13 J. If the conviction of a person who is subject to this section is  
14 overturned on appeal or postconviction relief and a final mandate has been  
15 issued, on petition of the person to the superior court in the county in  
16 which the conviction occurred, the court shall order that the person's  
17 deoxyribonucleic acid profile resulting from that conviction be expunged from  
18 the Arizona deoxyribonucleic acid identification system established by  
19 section 41-2418 unless the person has been convicted of another offense that  
20 would require the person to submit to deoxyribonucleic acid testing pursuant  
21 to this section.

22 K. If a person is arrested for any offense listed in subsection O,  
23 paragraph 3 of this section and is transferred by the arresting authority to  
24 a state, county or local law enforcement agency or jail, the arresting  
25 authority or its designee shall secure a sufficient sample of buccal cells or  
26 other bodily substances for deoxyribonucleic acid testing and extraction from  
27 the person for the purpose of determining identification characteristics.  
28 The arresting authority or its designee shall transmit the sample to the  
29 department of public safety.

30 L. ~~If a judicial officer as defined in section 13-3967 releases a~~  
31 ~~person on the person's own recognizance or on bail, the judicial officer~~ A  
32 PERSON WHO IS CHARGED WITH A FELONY OR MISDEMEANOR OFFENSE LISTED IN  
33 SUBSECTION O, PARAGRAPH 3 OF THIS SECTION AND WHO IS SUMMONED TO APPEAR IN  
34 COURT FOR AN INITIAL APPEARANCE shall ~~order the person to~~ report, within  
35 five days, ~~if the person is charged with a felony or misdemeanor offense~~  
36 ~~listed in subsection O, paragraph 3 of this section~~ OF RELEASE ON BAIL OR ON  
37 THE PERSON'S OWN RECOGNIZANCE to the law enforcement agency that arrested the  
38 person or its designee and submit a sufficient sample of buccal cells or  
39 other bodily substances for deoxyribonucleic acid testing and extraction.  
40 The arresting authority or its designee shall transmit the sample to the  
41 department of public safety. ~~If a person does not comply with an order made~~  
42 ~~pursuant to this subsection, the court shall revoke the person's release.~~

1 M. A person who is subject to subsection K or L of this section may  
2 petition the superior court in the county in which the arrest occurred or the  
3 criminal charge was filed to order that the person's deoxyribonucleic acid  
4 profile and sample be expunged from the Arizona deoxyribonucleic acid  
5 identification system, unless the person has been arrested or charged with or  
6 convicted of another offense that would require the person to submit to  
7 deoxyribonucleic acid testing pursuant to this section, if any of the  
8 following applies:

9 1. The criminal charges are not filed within the applicable period  
10 prescribed by section 13-107.

11 2. The criminal charges are dismissed.

12 3. The person is acquitted at trial.

13 N. If any sample that is submitted to the department of public safety  
14 under this section is found to be unacceptable for analysis and use or cannot  
15 be used by the department, the department shall require that another sample  
16 of blood or other bodily substances be secured pursuant to this section.

17 0. This section applies to persons who are:

18 1. Convicted of any felony offense.

19 2. Adjudicated delinquent for any of the following offenses:

20 (a) A violation or an attempt to violate any offense in chapter 11 of  
21 this title, any felony offense in chapter 14 or 35.1 of this title or section  
22 13-1507, 13-1508 or 13-3608.

23 (b) Any offense for which a person is required to register pursuant to  
24 section 13-3821.

25 (c) A violation of any felony offense in chapter 34 of this title that  
26 may be prosecuted pursuant to section 13-501, subsection B, paragraph 2.

27 (d) A violation of any felony offense that is listed in section  
28 13-501.

29 3. ~~Beginning January 1, 2008,~~ Arrested for a violation of any offense  
30 in chapter 11 of this title, a violation of section 13-1402, 13-1403,  
31 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1417, 13-1507, 13-1508,  
32 13-3208, 13-3214, 13-3555 or 13-3608 or a violation of any serious offense  
33 pursuant to section 13-604 involving the discharge, use or threatening  
34 exhibition of a deadly weapon or dangerous instrument or the intentional or  
35 knowing infliction of serious physical injury.

36 Sec. 3. Title 13, chapter 6, Arizona Revised Statutes, is amended by  
37 adding section 13-611, to read:

38 13-611. DNA sample; records; notice of disposal and expungement

39 A. IF THE DEPARTMENT OF PUBLIC SAFETY POSSESSES A PERSON'S  
40 DEOXYRIBONUCLEIC ACID SAMPLE OR DEOXYRIBONUCLEIC ACID RECORDS PURSUANT TO  
41 SECTION 13-610 AND THE DEPARTMENT RECEIVES A NOTICE OF DISPOSAL AND  
42 EXPUNGEMENT PURSUANT TO THIS SECTION, THE DEPARTMENT SHALL DISPOSE OF THE  
43 DEOXYRIBONUCLEIC ACID SAMPLE AND EXPUNGE THE PERSON'S DEOXYRIBONUCLEIC ACID  
44 RECORDS, INCLUDING ANY RECORDS MAINTAINED IN ANY ELECTRONIC DATABASE.

1           B. IF A DEOXYRIBONUCLEIC ACID SAMPLE IS TAKEN AT THE TIME OF A  
2 PERSON'S ARREST, THE ARRESTING AGENCY SHALL ISSUE A NOTICE OF DISPOSAL AND  
3 EXPUNGEMENT AND PROVIDE THE NOTIFICATION REQUIRED BY THIS SECTION ON THE  
4 EARLIER OF EITHER:

5           1. THE ARRESTING AGENCY'S DECISION TO NOT REFER THE MATTER FOR  
6 PROSECUTION.

7           2. THE TOLLING OF THE STATUTE OF LIMITATIONS FOR THE OFFENSE FOR WHICH  
8 THE ARREST WAS MADE AND THE MATTER WAS NOT REFERRED TO THE PROSECUTING  
9 AGENCY.

10          C. THE PROSECUTING AGENCY SHALL ISSUE A NOTICE OF DISPOSAL AND  
11 EXPUNGEMENT AND PROVIDE THE NOTIFICATION REQUIRED BY THIS SECTION ON THE  
12 EARLIER OF ANY OF THE FOLLOWING:

13           1. THE PERSON'S ACQUITTAL OF THE CHARGE OR CHARGES AT TRIAL.

14           2. THE DISMISSAL OF A CHARGE AFTER JEOPARDY HAS ATTACHED.

15           3. THE PROSECUTING AGENCY'S DECISION NOT TO PROSECUTE THE CHARGE,  
16 INCLUDING A DECISION NOT TO PURSUE A PROSECUTION AFTER DISMISSAL OF THE  
17 CHARGE WHEN JEOPARDY HAS NOT ATTACHED OR AFTER THE PERSON IS GRANTED  
18 APPELLATE OR POSTCONVICTION RELIEF ON THE CHARGE.

19           4. THE TOLLING OF THE STATUTE OF LIMITATIONS FOR THE OFFENSE ON WHICH  
20 THE CHARGE IS BASED.

21          D. THE NOTICE OF DISPOSAL AND EXPUNGEMENT SHALL INCLUDE SUFFICIENT  
22 INFORMATION FOR THE DEPARTMENT OF PUBLIC SAFETY TO IDENTIFY THE  
23 DEOXYRIBONUCLEIC ACID SAMPLE AND RECORDS THAT ARE THE SUBJECT OF THE NOTICE.

24          E. THE NOTICE OF DISPOSAL AND EXPUNGEMENT SHALL BE DELIVERED, IF  
25 APPLICABLE, TO ALL OF THE FOLLOWING:

26           1. THE DEPARTMENT OF PUBLIC SAFETY.

27           2. THE COURT, IF THE NOTICE OF EXPUNGEMENT IS ISSUED PURSUANT TO  
28 SUBSECTION C, PARAGRAPH 1 OR 2 OF THIS SECTION.

29           3. THE PERSON.

30           4. THE PROSECUTING AGENCY.

31           5. THE ARRESTING LAW ENFORCEMENT AGENCY.

32           6. THE PERSON'S DEFENSE ATTORNEY.

33          F. A NOTICE OF DISPOSAL AND EXPUNGEMENT IS NOT REQUIRED IF THE  
34 DEOXYRIBONUCLEIC ACID SAMPLE IS TAKEN PURSUANT TO SECTION 13-610 AS A RESULT  
35 OF MULTIPLE OFFENSES AND THE PROVISIONS OF THIS SECTION DO NOT APPLY TO AT  
36 LEAST ONE OF THE OFFENSES.

37          G. FOR THE PURPOSES OF THIS SECTION:

38           1. "DEOXYRIBONUCLEIC ACID RECORD" MEANS ANY DEOXYRIBONUCLEIC ACID  
39 SAMPLE AND RELATED TEST RESULTS.

40           2. "DEOXYRIBONUCLEIC ACID SAMPLE" MEANS A SUFFICIENT SAMPLE OF BLOOD  
41 OR OTHER BODILY SUBSTANCES THAT IS SECURED PURSUANT TO SECTION 13-610 FOR  
42 DEOXYRIBONUCLEIC ACID TESTING.

1           Sec. 4. Section 13-3967, Arizona Revised Statutes, is amended to read:  
2           13-3967. Release on bailable offenses before trial; definition

3           A. At his appearance before a judicial officer, any person who is  
4 charged with a public offense that is bailable as a matter of right shall be  
5 ordered released pending trial on his own recognizance or on the execution of  
6 bail in an amount specified by the judicial officer.

7           B. In determining the method of release or the amount of bail, the  
8 judicial officer, on the basis of available information, shall take into  
9 account all of the following:

- 10           1. The views of the victim.
- 11           2. The nature and circumstances of the offense charged.
- 12           3. The weight of evidence against the accused.
- 13           4. The accused's family ties, employment, financial resources,  
14 character and mental condition.
- 15           5. The results of any drug test submitted to the court.
- 16           6. Whether the accused is using any substance if its possession or use  
17 is illegal pursuant to chapter 34 of this title.
- 18           7. Whether the accused violated section 13-3407, subsection A,  
19 paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01.
- 20           8. The length of residence in the community.
- 21           9. The accused's record of arrests and convictions.
- 22           10. The accused's record of appearance at court proceedings or of  
23 flight to avoid prosecution or failure to appear at court proceedings.
- 24           11. Whether the accused has entered or remained in the United States  
25 illegally.
- 26           12. Whether the accused's residence is in this state, in another state  
27 or outside the United States.

28           C. If a judicial officer orders the release of a defendant who is  
29 charged with a felony either on his own recognizance or on bail, the judicial  
30 officer shall condition the defendant's release on the defendant's good  
31 behavior while so released. On a showing of probable cause that the  
32 defendant committed any offense during the period of release, a judicial  
33 officer may revoke the defendant's release pursuant to section 13-3968.

34           D. After providing notice to the victim pursuant to section 13-4406, a  
35 judicial officer may impose any of the following conditions on a person who  
36 is released on his own recognizance or on bail:

- 37           1. Place the person in the custody of a designated person or  
38 organization agreeing to supervise him.
- 39           2. Place restrictions on the person's travel, associates or place of  
40 abode during the period of release.
- 41           3. Require the deposit with the clerk of the court of cash or other  
42 security, such deposit to be returned on the performance of the conditions of  
43 release.

1           4. Prohibit the person from possessing any dangerous weapon or  
2 engaging in certain described activities or indulging in intoxicating liquors  
3 or certain drugs.

4           5. Require the person to report regularly to and remain under the  
5 supervision of an officer of the court.

6           6. Impose any other conditions deemed reasonably necessary to assure  
7 appearance as required including a condition requiring that the person return  
8 to custody after specified hours.

9           E. In addition to any of the conditions a judicial officer may impose  
10 pursuant to subsection D of this section, the judicial officer shall impose  
11 both of the following conditions on a person who is charged with a felony  
12 violation of chapter 14 or 35.1 of this title and who is released on his own  
13 recognizance or on bail:

14           1. Electronic monitoring where available.

15           2. A condition prohibiting the person from having any contact with the  
16 victim.

17           F. The judicial officer who authorizes the release of the person  
18 charged on his own recognizance or on bail shall do all of the following:

19           1. Issue an appropriate order containing statements of the conditions  
20 imposed.

21           2. Inform the person of the penalties that apply to any violation of  
22 the conditions of release.

23           3. Advise the person that a warrant for his arrest may be issued  
24 immediately on any violation of the conditions of release, including the  
25 failure to submit to deoxyribonucleic acid testing ordered pursuant to  
26 paragraph 4 of this subsection.

27           4. If the person is charged with a felony or misdemeanor offense  
28 listed in section 13-610, subsection 0, paragraph 3 **AND IS SUMMONED TO**  
29 **APPEAR**, order the person to report within five days to the law enforcement  
30 agency that arrested the person or to the agency's designee and submit a  
31 sufficient sample of buccal cells or other bodily substances for  
32 deoxyribonucleic acid testing and extraction. **IF A PERSON DOES NOT COMPLY**  
33 **WITH AN ORDER ISSUED PURSUANT TO THIS SUBSECTION, THE COURT SHALL REVOKE THE**  
34 **PERSON'S RELEASE.**

35           G. At any time after providing notice to the victim pursuant to  
36 section 13-4406, the judicial officer who orders the release of a person on  
37 any condition specified in this section or the court in which a prosecution  
38 is pending may amend the order to employ additional or different conditions  
39 of release, including either an increase or reduction in the amount of bail.  
40 On application, the defendant shall be entitled to have the conditions of  
41 release reviewed by the judicial officer who imposed them or by the court in  
42 which the prosecution is pending. Reasonable notice of the application shall  
43 be given to the county attorney and the victim.



1           H. Any information that is stated or offered in connection with any  
2 order pursuant to this section need not conform to the rules pertaining to  
3 admissibility of evidence in a court of law.

4           I. This section does not prevent the disposition of any case or class  
5 of cases by forfeiture of bail or collateral security if such disposition is  
6 authorized by the court.

7           J. A judicial officer who orders the release of a juvenile who has  
8 been transferred to the criminal division of the superior court pursuant to  
9 section 8-327 or who has been charged as an adult pursuant to section 13-501  
10 shall notify the appropriate school district on the release of the juvenile  
11 from custody.

12           K. For the purposes of this section and section 13-3968, "judicial  
13 officer" means any person or court authorized pursuant to the constitution or  
14 laws of this state to bail or otherwise release a person before trial or  
15 sentencing or pending appeal.